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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re Marriage of GRIZELDA and ERICK  
MEJIA.

2d Civil No. B261401  
(Super. Ct. No. D339230)  
(Ventura County)

GRIZELDA MEJIA,

Appellant,

v.

ERICK MEJIA,

Respondent.

Grizelda Mejia (wife) appeals from postjudgment orders modifying spousal support and denying her request for attorney fees and costs. She contends that the evidence is insufficient to show a material change of circumstances and to support a reduction in spousal support from \$1,327 to \$500 per month. She also contends that the trial court abused its discretion because it (1) did not properly consider the factors set forth in Family Code section 4320,<sup>1</sup> (2) did not award her attorney fees as a sanction pursuant to section 271, and (3) did not award her need-based attorney fees pursuant to section 2030. Because there is no reporter's transcript or agreed or settled statement in

<sup>1</sup> All statutory references are to the Family Code.

lieu of a reporter's transcript, most of wife's contentions are not reviewable on appeal. We affirm.

*Factual and Procedural Background*

Wife and Erick Mejia (husband) were married in August 1998 and the marriage was dissolved in August 2010. A marital settlement agreement (MSA) and DissoMaster calculation are attached to the judgment of dissolution. The MSA required husband to pay child support of \$2,673 per month and spousal support of \$1,327 per month. The DissoMaster calculation attributed no income to wife. In her opening brief wife states that, when she signed the MSA, she "was a full-time stay at home mother of the parties' three (3) young children and had monthly income of zero."

In December 2013 husband filed a request for an order modifying spousal and child support. Husband alleged, "[Wife] has a real estate license in this State and is capable of being self-supporting should she elect to do so."

In her responsive declaration, wife requested that the amount of spousal support remain the same or be increased. She also requested attorney fees pursuant to sections 271 and 2030.

In February 2014 the trial court temporarily reduced spousal support to \$1,164 per month and child support to \$2,619 per month. It granted husband's request for a vocational evaluation of wife.

June Hagen, Ph.D., performed the vocational evaluation. In her report, Hagen noted that wife is 36 years old and has three children aged 13, 11, and 4 years. She is bilingual in Spanish and English and has a real estate salesperson license. Since 2010, she has been employed by Century 21 Realty as a real estate sales agent. "She is on 100% commission." Her income tax documents show that in 2013 she earned \$14,053. "[S]he is working 7-8 hours a day, mostly in the evening and every other weekend. She shows properties when the children are in school or sometimes takes the children with her." She has been earning her income through residential leasing but currently has one sales listing with a 4% commission. If she sells this house, . . . she should earn in the range of \$5,000.00-\$10,000 [for the sale] . . . ." Wife has the "education, skills and

experience to work in an office as a Receptionist or General Clerk earning an average of \$29,300.00 (full-time) to start with full benefits." On the other hand, she could work part-time with annual earnings of \$14,500. "She should be able to find such employment within three months." In 1996-1998 wife worked as a receptionist in a dental office.

In August 2014 wife filed an Income and Expense Declaration showing that her average gross monthly income was \$1,613, consisting of spousal support of \$1,164 and earnings of \$449. She claimed monthly deductions totaling \$310.83. Her average monthly expenses were \$4,592.35.

In August 2014 husband filed an Income and Expense Declaration showing that his average gross monthly income was \$8,156. He claimed monthly deductions totaling \$810. His average monthly expenses were \$2,190.

Over the course of two days of live-witness testimony, the trial court conducted an evidentiary hearing on spousal support, child support, and attorney fees. Hagen, both parties, and another witness (Celeste Jones) testified. Hagen's report was admitted into evidence. A court reporter was not present, so there is no transcript of the hearing.

The minutes for the hearing state: "Exhibits are described in a separate list incorporated in the minutes by reference and attached hereto." The only list of exhibits in the record was prepared by husband. Husband's exhibits B and C are allegedly printouts from internet websites showing that wife is the listing real estate agent on two properties offered for sale at \$1.425 million and \$650,000.

#### *Trial Court's Ruling*

The court found that husband's gross monthly income was \$9,400. It observed that wife had "testified that she still worked about 7 to 8 hours per day five days per week trying to market and sell real estate." "[T]here was expert testimony that if wife was given sufficient time to develop her real estate practice that she could earn as much as \$60,000 to \$70,000 per year selling real estate. The expert also opined that wife could obtain employment almost immediately as a receptionist that would pay about \$29,000 per year." "[I]n light of wife's inability to [presently] generate significant income in the real estate field," the court "imputed half time minimum wage [of \$780 per month] to

wife to supplement her income from the marketing and selling of real estate." The court increased her income by \$500 per month for rent "that wife testified she receives commencing in May 2014."<sup>2</sup>

Effective May 1, 2014, the court ordered husband to pay child support of \$2,277 per month and spousal support of \$500 per month. On appeal, wife contests only the reduction in spousal support.

*Modification of Spousal Support: Standard of Review*

"The modification of a spousal support order is reviewed on appeal for abuse of discretion. In exercising its discretion the trial court must follow established legal principles and base its findings on substantial evidence. If the trial court conforms to these requirements its order will be upheld whether or not the appellate court agrees with it or would make the same order if it were a trial court." (*In re Marriage of Schmir* (2005) 134 Cal.App.4th 43, 47, fn.omitted.) "We ' "must accept as true all evidence tending to establish the correctness of the trial judge's findings, resolving all conflicts in the evidence in favor of the prevailing party and indulging in all legitimate and reasonable inferences to uphold the judgment." ' [Citation.]" (*In re Marriage of Bower* (2002) 96 Cal.App.4th 893, 899.)

*Sufficiency of the Evidence to Show a  
Material Change of Circumstances*

"Modification of spousal support requires a material change of circumstances since the last order. [Citation.]" (*In re Marriage of Lautsbaugh* (1999) 72 Cal.App.4th 1131, 1133.) " ' "[A]n abuse [of discretion] occurs when a court modifies a support order without substantial evidence of a material change of circumstances. [Citations.]" [Citations.]" [Citation.]" (*In re Marriage of Bower, supra*, 96 Cal.App.4th at p. 899.)

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<sup>2</sup> In her opening brief wife states, "At the hearing, [she] testified she . . . began receiving monthly rental income of \$500 per month as a result of renting out a room in the family residence . . . ."

Wife contends that the evidence is insufficient to show a material change of circumstances.

"[W]e must presume [that] the judgment is correct . . . and . . . that the record contains evidence sufficient to support the judgment. [Citations.]" (*Steele v. Youthful Offender Parole Bd.* (2008) 162 Cal.App.4th 1241, 1251.) "[A] party challenging a judgment has the burden of showing reversible error by an adequate record. [Citations.]" (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574-575.)

There is no reporter's transcript of the evidentiary hearing. Nor is there an agreed or settled statement in lieu of a reporter's transcript. (See Cal. Rules of Court, rule 8.134(h).) Wife is therefore precluded from arguing that the evidence is insufficient to show a material change of circumstances. "Where no reporter's transcript has been provided and no error is apparent on the face of the existing appellate record, the judgment must be *conclusively presumed correct* as to *all evidentiary matters*. To put it another way, it is presumed that the unreported trial testimony would demonstrate the absence of error. [Citation.] The effect of this rule is that an appellant who attacks a judgment but supplies no reporter's transcript [or agreed or settled statement in lieu of a reporter's transcript] will be precluded from raising an argument as to the sufficiency of the evidence. [Citations.]" (*In re Estate of Fain* (1999) 75 Cal.App.4th 973, 992.)

In any event, the appellate record contains sufficient evidence to support a finding that a material change of circumstances had occurred since the last order in 2010. As wife notes in her opening brief, at the time of the last order she "was a full-time stay at home mother of the parties' three (3) young children and had monthly income of zero." According to the trial court, wife testified that she is presently working "about 7 to 8 hours per day five days per week." Wife's change of status from "a full-time stay at home mother" to a mother who works 35 to 40 hours per week is a material change of circumstances. Moreover, the trial court observed that, starting in May 2014, wife is receiving monthly rental income of \$500.

*Alleged Failure to Consider Section 4320 Factors*

Wife claims that the trial court "did not properly address all of the [section] 4320 factors in issuing its ruling of a significantly reduced spousal support figure." We disagree. The trial court stated, "In making this order for spousal support, the court has considered the earnings or earning capacity of the parties, the length of marriage, wife's role as primary care provider for the children, the tax consequences of spousal support, and the other factors set forth in Family Code § 4320."

*Sufficiency of the Evidence to Support*

*The Reduction in Spousal Support to \$500*

Wife argues that, in view of the section 4320 factors, "[t]he evidence supported [her] ongoing need for spousal support in the agreed upon amount of \$1,327 per month [the amount agreed to in the MSA], not a reduction in her spousal support to \$500.00 per month." (Italics omitted.) In the absence of a reporter's transcript or an agreed or settled statement in lieu of a reporter's transcript, wife is precluded from arguing that the evidence is insufficient to support the reduction in spousal support. (*In re Estate of Fain*, *supra*, 75 Cal.App.4th at p. 992.)

*Attorney Fees and Costs*

Wife contends that the trial court erroneously denied her request for attorney fees and costs pursuant to sections 271 and 2030. "[S]ection 271, subdivision (a) provides the trial court with authority to order the opposing party to pay attorney fees and costs in the nature of a sanction when 'the conduct of each party or attorney . . . frustrates the policy of the law to promote settlement of litigation.' " (*In re Marriage of Feldman* (2007) 153 Cal.App.4th 1470, 1477.)

Section 2030, subdivision (a)(1) provides that "the court shall ensure that each party has access to legal representation . . . to preserve each party's rights by ordering, if necessary based on the income and needs assessments, one party . . . to pay to the other party . . . whatever amount is reasonably necessary for attorney's fees and for the cost of maintaining or defending the proceeding . . . ." Section 2032, subdivision (b) provides that, in determining whether to make an award pursuant to section 2030, "the court shall

take into consideration the need for the award to enable each party, to the extent practical, to have sufficient financial resources to present the party's case adequately, taking into consideration . . . the circumstances of the respective parties . . . ."

As to her request for section 2030 attorney fees, wife asserts: "[Husband] had a much greater ability to pay and maintain legal counsel than [wife], given the great disparity in the parties['] relative incomes. [Husband] continued to receive significant income, while [wife] earned a small fraction of [his] income, if any." But the trial court reasoned: "The purpose of [section 2030] attorney's fees is to level the playing field in respect to legal representation and is based on a need and ability to pay standard. After the payment of child and spousal support, the net available income to the parties will be split about 60%-40% in favor of wife. . . . Both husband and wife are in the same predicament in respect to a need for legal fees, and like in most cases, neither [has] the ability to assist the other."

The trial court "has considerable latitude to make a just and reasonable fee award" pursuant to section 2030. (*In re Marriage of Cryer* (2011) 198 Cal.App.4th 1039, 1054.) "In deciding whether to award attorney fees, the trial court considers the parties' respective needs and incomes, including their assets and liabilities. [Citation.] A [section 2030] motion for attorney fees is left to the trial court's sound discretion and will not be disturbed on appeal absent a clear showing of abuse. [Citation.] ' "[T]he trial court's order will be overturned only if, considering *all the evidence* viewed most favorably in support of its order, no judge could reasonably make the order made. [Citations.]" [Citation.]' [Citation.]" (*In re Marriage of Bendetti* (2013) 214 Cal.App.4th 863, 868-869, italics added.) The abuse of discretion standard of review also applies to a trial court's ruling on a request for attorney fees as a sanction pursuant to section 271. (*In re Marriage of Burgard* (1999) 72 Cal.App.4th 74, 82.)

The problem here is that we are unable to "consider[] *all the evidence* viewed most favorably in support of [the trial court's] order" because there is no reporter's transcript of the evidentiary hearing or agreed or settled statement in lieu of a reporter's transcript. (*In re Marriage of Bendetti, supra*, 214 Cal.App.4th at p. 869, italics added.) The trial

court's minutes show that the evidentiary hearing concerned the issue of attorney fees as well as the issues of spousal and child support. For each of the two days of the hearing, the heading on the minute order reads: "EVIDENTIARY HEARING ON ISSUES: Spousal Support, Child Support, Attorney Fees." "It is the burden of the party challenging the fee award [or denial of a fee award] on appeal to provide an adequate record to assess error. [Citation.]" (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295.) Wife did not carry her burden. (See *Id.*, at pp. 1295-1296 ["Because they failed to furnish an adequate record of the attorney fee proceedings, defendants' claim must be resolved against them"].)

*Disposition*

The orders reducing spousal support to \$500 per month and denying wife's request for attorney fees and costs are affirmed. Husband shall recover his costs on appeal.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.



Rocky J. Baio, Judge  
Superior Court County of Ventura

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